EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

Application no. 17803/20
Mirza MAVRIC
against Denmark

The European Court of Human Rights (Second Section), sitting on 29 March as a Chamber composed of:

Carlo Ranzoni, *President,*
Jon Fridrik Kjølbro,
Branko Lubarda,
Pauliine Koskelo,
Jovan Ilievski,
Gilberto Felici,
Diana Sârcu, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 20 April 2020,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Mirza Mavric, is a Serbian national who was born in 1979 and lives in Roskilde. He was represented before the Court by Mr Tyge Trier, a lawyer practising in Copenhagen.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. The applicant was born in Serbia. In 1996, when he was 17 years old, he obtained a residence permit in Denmark. He has no spouse or children. In 2003 he was diagnosed with schizophrenia, and since 2005 he has lived on an early retirement pension.

4. The applicant has had a criminal record since 1997. In the period from 1997 to 2003 he was convicted 13 times, notably for violence, threats against

civil servants, two robberies, offences against property and drug and traffic offences.

5. By a District Court judgment of 20 May 2005, he was convicted of violence under aggravating circumstances and making threats against civil servants. Finding that the applicant was of unsound mind due to a mental disorder or a comparable condition at the time of committing the act, the court exempted him from punishment by virtue of article 16(1) of the Penal Code. Instead, under article 68 of the Penal Code, he was sentenced to committal to a psychiatric department. A request by the Prosecution Service that the applicant also be expelled was dismissed. Subsequently, as part of the regular review of the sentence, on 22 October 2009 the sentence was changed to treatment in a psychiatric department. That sentence was upheld on 8 December 2011.

6. On 20 September 2012 he was convicted of offences against property and drug offences and sentenced anew to treatment in a psychiatric department.

7. On 26 November 2012, 28 April 2014, 25 June and 5 October 2015 he was fined, mainly for offences against property.

8. By a District Court judgment of 18 December 2017 the applicant was convicted for violence, threats against civil servants, offences against property and drug and traffic offences. Finding that the applicant was covered by article 16(1) of the Penal Code, the court sentenced him to treatment in a psychiatric department. In addition, a suspended expulsion order was issued against him, with two years' probation from his discharge.

9. The applicant was discharged from the psychiatric department on 29 January 2018.

10. Most recently, by a District Court (*Københavns Byret*) judgment of 25 October 2018, the applicant was convicted on five counts, two of them concerning robberies committed on 9 and 12 February 2018, thus within the probation period, and three of them concerning offences against property. He was again found to be covered by article 16(1) of the Penal Code and exempted from punishment, and instead sentenced to treatment in a psychiatric department. Having examined the case in the light of Article 8 of the Convention, and having made an overall assessment, the District Court also ordered the applicant's expulsion from Denmark with a six-year ban on his re-entry.

11. For the purposes of the criminal proceedings, the Immigration Service (*Udlændingestyrelsen*) and a Psychiatric Department had gathered information about the applicant's personal circumstances, which included the following. The applicant was considered to be covered by article 16(1) of the Penal Code. He had suffered from schizophrenia for fifteen years. In addition, since he was 16 years old, he had had a substance abuse habit. He was still under methadone treatment. His mother and two brothers lived in Denmark. The applicant had been to Serbia several times on holiday, most recently alone for

some weeks in 2015/2016. He no longer had family there, so he stayed in hotels.

12. The applicant appealed against the judgment to the High Court (*Østre Landsret*) and added without further elaboration "that he did not believe that he would get the help he needed in Serbia".

13. By a judgment of 26 June 2019, the High Court upheld the District Court's judgment. In respect of the expulsion order, the High Court had regard to the Court's case-law under Article 8 of the Convention. It noted, among other things, that the applicant had been registered in Denmark since July 1996, that his mother and brothers lived there and that he spoke Danish. He also spoke Serbian and had been to Serbia on holiday several times. Accordingly, the High Court found it established that the applicant's link with Denmark was stronger than his link with Serbia, but that he had the prerequisites for establishing a life in the latter. The High Court also assumed that the applicant could obtain treatment for his schizophrenia in Serbia.

14. In respect of the nature and seriousness of the offences, the High Court noted that the crimes had been committed within the two-year probation period of the suspended expulsion order of 18 December 2017, shortly after the applicant had been discharged from the Psychiatric Department on 29 January 2018. Moreover, having regard to the applicant's criminal past, and the fact that he had continually committed violent crimes and offences against property, and taking into account his mental condition and his many years of substance abuse, the High Court found that there was a risk that the applicant would continue to commit crimes in Denmark in the future if he were not expelled.

15. Having made an overall assessment, the High Court considered that unconditional expulsion with a re-entry ban of six years would not be in breach of Article 8 of the Convention.

16. Relying on Article 8 of the Convention, the applicant requested leave to appeal to the Supreme Court (*Højesteret*), which was refused on 19 September 2019.

17. It is not known whether the applicant has been discharged from the psychiatric department and whether, in that connection, the obligatory revocation proceedings under section 50a(2) of the Aliens Act have been brought before the domestic courts, and whether the deportation order has been enforced.

B. Relevant domestic law

18. The relevant provisions of the Aliens Act (*Udlændingeloven*) relating to expulsion have been set out in detail in, for example, *Savran v. Denmark* [GC], no. 57467/15, §§ 76-78, 7 December 2021.

19. The relevant provisions of the Penal Code were set out in the same judgment (see ibid., § 75).

COMPLAINTS

20. Before the Court the applicant complained that, due to the state of his mental health and lack of relatives and a social network in Serbia, his removal thereto would be in breach of Article 3 of the Convention.

21. The applicant also complained that the High Court's decision of 26 June 2019 to expel him with a re-entry ban of six years was in breach of Article 8 of the Convention.

THE LAW

22. Regarding the complaint under Article 3 of the Convention, the Court reiterates, in respect of the requirements of exhaustion of domestic remedies, (see, *inter alia*, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 70-72, 25 March 2014), that States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system; those who wish to rely on the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system. It should be emphasised that the Court is not a court of first instance.

23. In the present case, in the domestic proceedings the applicant only relied on Article 8 of the Convention. Admittedly, before the High Court he submitted, without any further elaboration, "that he did not believe that he would get the help he needed in Serbia" (see paragraph 12 above). However, he did not adduce any evidence capable of demonstrating that there were substantial grounds for believing that, if the expulsion were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see, notably, *Paposhvili v. Belgium* [GC], no. 41738/10, § 186, 13 December 2016, and *Savran v. Denmark* [GC], cited above, § 130). In his request for leave to appeal to the Supreme Court the applicant also only relied on Article 8. Thus, it cannot be said that, in form or substance, he brought before the domestic courts, as he could have done, the complaint under Article 3 now lodged before the Court.

24. Moreover, before being expelled, on being discharged from the psychiatric department the applicant has or had the possibility of relying on Article 3 in the revocation proceedings under section 50a(2) of the Aliens Act (see paragraph 17 above; and see, for example, *Savran*, cited above, albeit concerning section 50a(1) of the Aliens Act).

25. It follows that this part of the application must be declared inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 §§ 1 and 4 of the Convention.

26. Regarding the complaint under Article 8 of the Convention, where the person to be expelled is a migrant who has not yet founded a family of his

own, the principles to be applied have recently been set out in, for example, *Savran* (cited above, §§ 181-189 and 194). It will be recalled that the applicant in the present case was 17 years old when he obtained a residence permit and moved to Denmark. Thus, the applicant was not born in Denmark and he had not spent all or the major part of his childhood and youth there. Consequently, "very serious reasons" cannot be required to justify expulsion (see, *a contrario*, *Maslov v. Austria* [GC], no. 1638/03, § 75, ECHR 2008).

27. The Court considers it established that there was an interference with the applicant's right to respect for his private life (rather than "family life") within the meaning of Article 8 and that the expulsion order and the re-entry ban were "in accordance with the law" and pursued the legitimate aim of preventing disorder and crime (see also, for example, *Savran*, cited above, §§ 178-180).

28. As to the question of whether the interference was "necessary in a democratic society", the Court recognises that the domestic courts thoroughly examined each relevant criterion set out, for example, in *Maslov*, cited above, §§ 72-73).

29. The District Court and the High Court gave particular weight to the nature and seriousness of the crime committed and the sentence imposed by virtue of article 68 of the Penal Code, including the applicant's criminal past, the fact that he had previously been issued with a suspended expulsion order and that he had continued to commit crimes (see paragraphs 10 and 14 above).

30. The Court finds reason to add that two of the crimes concerned robberies, which had serious consequences for the lives of others (see, for example, *Khan v. Denmark*, no. 26957/19, § 72, 12 January 2021; *Samsonnikov v. Estonia*, no. 52178/10, § 89, 3 July 2012; and *Salem v. Denmark*, no. 77036/11, § 66, 1 December 2016).

31. Moreover, the domestic courts specifically took into account that the applicant was, due to his mental illness, ultimately exempt from punishment, and instead sentenced him to treatment in a psychiatric department, as had the domestic courts in all the applicant's previous convictions since 2005 (see, *a contrario*, *Savran*, cited above, § 196).

32. The District Court and the High Court properly took into account the criterion "the solidity of social, cultural and family ties with the host country and with the country of destination" and found that expulsion from Denmark combined with a re-entry ban of six years would be a burden on the applicant due to his ties with Denmark. However, having regard to his ties with Serbia, where he was born and grew up and had been on holiday several times alone, most recently in 2015/2016, and his knowledge of the Serbian language, they found that the applicant had the prerequisites for establishing a life there.

33. Finally, the national courts found that the expulsion order, combined with a six-year re-entry ban, was a proportionate measure to prevent disorder and crime. The Court notes in this context that the duration of a ban on

re-entry, in particular the fact that such a ban is limited, is an element to which it has attached importance in its case-law (see, for example, *Külekci v. Austria*, 30441/09, § 51, 1 June 2017, and *Khan*, cited above, § 79).

34. Having regard to all of the elements described above, the Court concludes that the interference with the applicant's private life was supported by relevant and sufficient reasons and that his expulsion was not disproportionate in the light of all the circumstances of the case. It notes that the High Court explicitly and thoroughly assessed whether the expulsion order could be deemed to be contrary to Denmark's international obligations. The Court points out in that regard that, in accordance with the principle of subsidiarity, although opinions may differ on the outcome of a judgment, "where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts" (see, among others, *Ndidi v. the United Kingdom,* no. 41215/14, § 76, 14 September 2017, and *Levakovic v. Denmark*, no. 7841/14, § 45, 23 October 2018). Such reasons are lacking in the present case.

35. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 5 May 2022.

Stanley Naismith Registrar	Carlo Ranzoni President